



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: B-223874.2

File: Miami Wall Systems, Inc.--Request for  
Reconsideration of Protest Filed by Koch Corporation

Date: January 8, 1987

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### DIGEST

1. Prior decision is affirmed where request for reconsideration does not show any error of fact or law which warrants reversal.
2. Descriptive literature clause in an invitation for bids which merely states in general terms what categories of descriptive literature might be required is defective due to lack of specificity.

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### DECISION

Miami Wall Systems, Inc. (Miami), requests that we reconsider our decision in Koch Corporation, B-223874, Nov. 10, 1986, 66 Comp. Gen. \_\_\_, 86-2 C.P.D. ¶ 544. In that decision we sustained the protest of Koch against the rejection of Koch's low bid by the Veterans Administration (VA) under invitation for bids (IFB) No. 556-66-86, due to Koch's failure to include descriptive literature with its bid, because we found that the descriptive literature clause in the IFB was defective due to its lack of specificity.

We affirm our prior decision.

The IFB was issued by the VA on May 5, 1986, and solicited bids for the replacement of existing windows in two VA medical center buildings. Nine bids were received and opened on June 16. Koch's low bid of \$1,046,747 was rejected because Koch failed to submit descriptive literature with its bid. Only four bidders out of nine submitted descriptive literature. Award was made to Miami, the second low bidder, on July 31.

In its protest, Koch argued that although the IFB contained the standard descriptive literature clause set forth in the

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Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-21 (1985), <sup>1/</sup> the IFB failed to specify which portions of the detailed plans or specifications that the descriptive literature should address, and therefore did not put bidders on notice that descriptive literature must be submitted with the bids.

In sustaining Koch's protest we found that the descriptive literature clause merely stated in general terms that descriptive literature--"required elsewhere in the solicitation"--would be required, but actually the IFB failed

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<sup>1/</sup> The IFB contained the following descriptive literature clause:

"52.214-21 Descriptive Literature (APR 1984)

(a) 'Descriptive Literature' means information (e.g., cuts, illustrations, drawings, and brochures) that is submitted as part of a bid. Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as (1) design; (2) materials; (3) components; (4) performance characteristics; and (5) methods of manufacture, assembly, construction, or operation. The term includes only information required to determine the technical acceptability of the offered product. It does not include other information such as that used in determining the responsibility of a prospective Contractor or for operating or maintaining equipment.

(b) Descriptive literature, required elsewhere in this solicitation, must be (1) identified to show the item(s) of the offer to which it applies and (2) received by the time specified in this solicitation for receipt of bids. Failure to submit descriptive literature on time will require rejection of the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) The failure of descriptive literature to show that the product offered conforms to the requirements of this solicitation will require rejection of the bid." (Emphasis added.)

to specify elsewhere the nature and extent of the descriptive literature required. We concluded, therefore, that the IFB was defective because it did not put bidders on notice as to what literature was required and for what purposes and therefore did not establish a common basis for the evaluation of bids. See Air Plastics, Inc., 53 Comp. Gen. 622 (1974), 74-1 C.P.D. ¶ 100; 46 Comp. Gen. 1 (1966).

In its request for reconsideration, Miami argues that the standard FAR descriptive literature clause in the IFB (quoted above), without additional specific descriptive literature information, was enough to put bidders on notice as to what literature was necessary. Miami states that all bidders qualified and experienced in its "specialty industry" would be aware as to the nature and the extent of the descriptive literature required. Miami contends that Koch had not fully read the IFB and therefore did not know that a descriptive literature requirement existed. We disagree with Miami's arguments.

As stated above, the descriptive literature clause outlined only in general terms that descriptive literature "required elsewhere in the solicitation," would be necessary. The IFB failed, however, to specify elsewhere the nature and extent of the descriptive literature required. As stated in our original decision, because the IFB incorporates more than 75 other publications and specifications, each with many requirements, and the IFB itself contains hundreds of detailed requirements, from reading the IFB's descriptive literature clause, a bidder would not reasonably be aware of what literature, if any, was required, and for what purpose. Air Plastics, Inc., 53 Comp. Gen. 622, supra; 46 Comp. Gen. 1, supra.

The essence of Miami's request for reconsideration is that our Office, in its original decision, "took an objective interpretation" of the descriptive literature requirement and that we should make a subjective interpretation as well, "since the terminology used is clearly within the understanding of the industry for this type of specialty items."

Miami has not shown that our interpretation of the descriptive literature requirement is incorrect as a matter of fact or law. In addition, although Miami contends that the general descriptive literature clause is adequate to place on notice all qualified and experienced bidders in the field as to the nature and extent of descriptive literature required, Miami does not address the evidence to the contrary, namely the fact that more than half of the bidders submitted no descriptive literature at all. Moreover, Miami

does not explain how bidders should have known exactly what descriptive literature was required and for what purposes when the descriptive literature clause states that specific descriptive literature is "required elsewhere" in the IFB but the IFB does not elsewhere state what descriptive literature was required.

Because Miami has not shown that our prior decision contains any errors of fact or law, that decision is affirmed.

*for* *Harry R. Van Cleave*  
Comptroller General  
of the United States